

## PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

072755-020100

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Signature

Melissa Lusian 12/21/07

Typed or printed name

Melissa Lusian

Application Number

09/407,124

Filed

September 27, 1999

First Named Inventor

William D. Kennedy

Art Unit  
3622Examiner  
Alvarez, Raquel

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐

applicant/inventor.

☐

assignee of record of the entire interest.

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.  
(Form PTO/SB/96)

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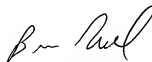
attorney or agent of record.

Registration number 37,406

☐

attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 \_\_\_\_\_



Signature

Bruce T. Neel

Typed or printed name

602-445-8339

Telephone number

December 21, 2007

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.  
Submit multiple forms if more than one signature is required, see below\*.

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\*Total of \_\_\_\_\_ forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

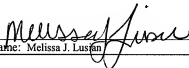
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: William D. Kennedy Examiner: Alvarez, Raquel  
Serial No. 09/407,124 Group Art Unit: 3622  
Filed: September 27, 1999 Docket No. 072755-020100  
Title: METHOD TO CREATE A CUSTOMIZED E-COMMERCE STORE  
Customer No.: 33717

**CERTIFICATE OF TRANSMISSION**

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Name: Melissa J. Luskin

**REASONS FOR REQUEST FOR PANEL REVIEW**

Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir/Madam:

Pre-appeal brief conference review is appropriate when there are clear errors in the Examiner's review and/or the Examiner has omitted one or more essential elements needed for a prima facie rejection. Applicant believes that at least one of these conditions is present here.

Claims 22, 23 and 29-35 remain pending in the application. Claim 22 is the sole independent claim that remains pending. Claims 1-21, 24-28, and 36-53 have been previously cancelled.

**Rejection under 35 U.S.C. 102**

In the Final Office Action, the Examiner rejected claims 22, 29-32 and 35 under U.S.C. 102 as anticipated by Johnson et al. (U.S. Pat. No. 5,712,989, hereinafter "Johnson"). Under 35 U.S.C. 102(b), "a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. Of California*, 814 F.2d 628, 631, 2 USPQ2d 1051 (Fed. Dir. 1987). Applicant respectfully submits that Johnson does not teach or disclose the invention as claimed because the system described by Johnson, although it uses the same terminology, is very different from the claimed invention.

The Examiner argues in the Final Office Action that Johnson teaches a "host adapted for two-way communication with a plurality of distributors..." and "a store builder" adapted to "create a store managed by the host for the store owner, said store providing a consumer with access, via said distributors, to at least one merchandise item selected from the inventory".

Johnson describes a "just-in-time" (JIT) inventory management system in which the "[h]ost computer 10 controls all inventory, pricing and requisitioning operations of the Distributor's regularly stocked items..." (Johnson, col. 3, lines 10-12). The system primarily uses two computers "a host computer 10 located at a Distributor site and a local computer 40 used by a Customer Service Representative (CSR) at or near the customer site and the site of the JIT inventory" (Johnson, col. 2, lines 64-67). Johnson describes in detail how the JIT inventory management system works to maintain the appropriate level of inventory at the Distributor's site in response to purchase orders received.

In Johnson, there is no store builder that creates a store, in response to a request from a store owner, that provides consumers with access to at least one item in the inventory of a distributor. Rather, in Johnson, it is the "Distributor" that provides consumers access to the Distributor's items. There is no teaching or suggestion that the system of Johnson allows a store owner to "create" a store of any kind. While the system of Johnson allows a Distributor to manage the inventory of a store, the store and its inventory must be pre-existing before the system of Johnson is useful in any way.

In the Examiner's rejection, the Examiner cites Table V of Johnson as evidence that "the store is customized by store name". However, Table V is actually an example of the inputs available to a Customer Service Representative for manually entering ordering information for products that a Distributor wishes to sell but does not stock. (See, e.g., Johnson, Col. 10, Lines 39-47: "Hitting the F10 key calls the Non-Catalog Information data screen 80 onto the screen of monitor 41. An example of a Non-Catalog Information data screen 80 is shown in Table V. This data screen is used to enter additional information about items not regularly sold by Distributor (for which host database 20 contains a Distributor catalog number and list price), but which are available as third-party purchases by Distributor (product type 04) or as administrative purchases by Customer (product type 05)...").

Applicant submits that Johnson's system allowing the manual entry of new inventory items into a database does not "create a store" as claimed by claim 22. Furthermore, although "hitting the F10 key" may be a request, it does not by any means result in the creation of a store that did not exist prior to the request. Rather, this facet of Johnson's system referred to by the Examiner is the inventory management equivalent of placing a new product on the shelf of a pre-existing store so that it can be purchased.

Thus, for the reasons provided above, Applicant believes that Johnson does not teach or disclose a "store builder" as claimed. Therefore, Applicant respectfully submits that independent claim 22, and its dependent claims 23, and 29-35, are in condition for allowance.

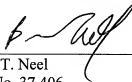
### **Conclusion**

It is respectfully submitted that the Examiner's rejections in the Final Office Action contain clear errors and/or omit one or more essential elements needed for a prima facie rejection. Accordingly, Applicant respectfully requests a Notice of Allowance for this application.

This constitutes a request for any needed extension of time under 37 C.F.R. § 1.136(a) and an authorization to charge all fees therefore to deposit account No. **150184** if not otherwise

specifically requested. The Commissioner is hereby authorized to charge any required fees not included, or any deficiency of fees submitted herewith, or credit any overpayment to Deposit Account No. **150184**.

Respectfully submitted,



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Date: December 21, 2007

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